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February 13, 2003

**VIA FACSIMILE – 312-886-7160**

Thomas Martin  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

**Re: Sauget Area 2 Site - Groundwater Operable Unit, Sauget, Illinois  
Notice Under Section 122(a) of CERCLA of Unilateral Administrative Order  
(UAO)**

Dear Tom:

We are writing in response to the UAO on behalf of Eagle Marine Industries, Inc. (formerly known as Notre Dame Fleeting and Towing Inc., and which merged with Riverport Terminal and Fleeting Inc.), ConAgra, Inc. and Peavey Company (hereinafter "Responding Parties"). Please consider this the notice of the Responding Parties of their unequivocal intention to comply with all terms of the UAO as required by paragraph 99 of the UAO.

The Responding Parties and Solutia/Monsanto/Pharmacia ("Solutia") are in the process of memorializing their current agreement in principle which defines the Responding Parties' contribution to the remedy. We fully expect that we will be able to memorialize this agreement in the near future. The Responding Parties' contribution to the remedy consists of a grant of permanent access by Eagle Marine to Solutia for installation and maintenance of a portion of the grout wall on property owned by Eagle Marine. The nature of the agreement is explained in greater detail below.

Eagle Marine began its cooperation with Solutia on the groutwall project even before Eagle Marine received the UAO. It had begun negotiations at Solutia's request, because Solutia informed Eagle Marine that the entire southern prong of the U-shaped groutwall was to be located on Eagle Marine's property, as the plume of contamination from Site R had migrated onto Eagle Marine's property. According to Solutia, it is necessary to locate the wall on Eagle Marine's property in order to fully contain the plume. During a meeting on October 7 between Eagle Marine and Solutia, Solutia's technical representative, Richard Williams, indicated that once the wall was installed, Solutia would probably not want production activities to occur on the ground surface above the wall. The installation of the wall and its maintenance is a taking of

a portion of the Eagle Marine property, and the grant of access for installation and maintenance of the wall is a highly valuable contribution to the remedy.

Notwithstanding the Responding Parties' commitment to participate, we also want to take the opportunity, pursuant to paragraph 101 of the UAO, to provide written comments to U.S. EPA on behalf of Eagle Marine to support the responding parties' position that they can establish the sufficient cause defense under Section 106(b) of CERCLA. Sufficient cause" does not require success on the merits. A PRP does not become liable for treble damages and penalties simply if it loses a legal challenge involving the UAO. In U.S. v. Reilly Tar, 606 F.Supp. 412, 418 (D. Minn. 1985), the Court observed, "The decisions of the Supreme Court in *ex parte Young* and its progeny clearly established that a person has a due process right to challenge the validity of an administrative order affecting his affairs without having to be forced to pay exorbitant penalties if the challenge is unsuccessful." Section 106 provides that sanctions "may" be imposed, but does not provide that they "shall" be imposed. In other words, losing a legal challenge does not mean that sanctions will automatically follow.

Responding Parties are not liable for the following reasons. Eagle Marine is not liable under CERCLA for conditions existing on Site Q because it is an innocent landowner of Site Q, including the panhandle or dog leg area that is referenced in the UAO. Eagle Marine, through its predecessor in interest, acquired the property in 1973, at a time when environmental assessments, phase I's and phase II's were unheard of in property acquisition. What constituted "all appropriate inquiry" in 1973 was vastly different than what is considered all appropriate inquiry currently. To the best of Eagle Marine's knowledge, Eagle Marine had no knowledge that hazardous substances had been disposed of on Site Q, although it was aware that the facility had been used as a municipal disposal facility. At the time it acquired the property, it was informed by the prior owners that the property had been used strictly as a municipal waste site and not for the disposal of any hazardous substances.

Peavey Company, a division of Con Agra, Inc., has been a tenant on the property since 1989. Peavey believes that its occupation of the premises has not contributed to the contamination on the property. Peavey's leasehold does not include any portion of Site R of the dogleg/panhandle of Site Q.

Eagle Marine has taken substantial steps to prevent the spread of the substances from the property. For example, Eagle Marine is currently in the process of implementing a U.S. Army Corps of Engineers approved plan to cover portions of a municipal landfill on a different portion of Site Q than is covered under the UAO. These are steps that Paul Sauget was ordered to undertake in the 1970's by the Illinois Pollution Control Board, which he refused to do. Eagle Marine has also taken measures to install rip rap along the shore line of site Q to prevent erosion and leaching of contaminants into the Mississippi River, thereby stabilizing the property.

Based upon the foregoing factors, Responding Parties believe they have no liability under CERCLA and believe they have sufficient cause not to comply with the UAO. Notwithstanding



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that fact, Responding Parties are participating in the implementation of the UAO in the interest of cooperation and the avoidance of legal fees.

Finally, pursuant to paragraph 79 of the UAO, please consider this the written certification of the Responding Parties to U.S.EPA that the Responding Parties have not altered, mutilated, discarded, destroyed or otherwise disposed of any record, documents or other information relating to their potential liability with regard to the OU site and OU source areas since the time of their notification of potential liability by U.S. EPA or the State of Illinois.

Please call me with any questions.

Sincerely yours,

Julie O'Keefe

JEO/hls

cc: Richard D. Burke  
John Andreasen